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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/408,861	09/30/99	BUMBARGER	S N-4310

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WADDEY & PATTERSON
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NASHVILLE TN 37219

EXAMINER

GIBSON, R

ART UNIT

PAPER NUMBER

3739

DATE MAILED:

09/21/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/408,861

Applicant(s)
Bumbarger

Examiner
Roy Gibson

Art Unit
3739



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Aug 6, 2001

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 31-65 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) 47-65 is/are allowed.

6) ☒ Claim(s) 31-41 and 43 is/are rejected.

7) ☒ Claim(s) 42 and 44-46 is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5-7

20) ☐ Other:

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DETAILED ACTION

Election/Restriction

Applicant's election without traverse of claims 31-42 in Paper No. 9, plus the addition of claims 43-65, which are appropriate for the elected invention, are acknowledged.

Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31, 37 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Zafiroglu (4,897,297).

As to claims 31 and 43, Zafiroglu discloses a method of cooling a person, comprising: providing multi-layered, liquid-retaining composite material comprising a fiberfill batting material (mixture of synthetic polymer pulp or wood pulp, which is a fiber) and hydrophilic polymeric fibers or particles that absorb at least 2.5 times the fiber's or particle's weight (15-35 times); soaking the multi-layered, liquid-retaining composite material in a liquid (water); and employing the same as a flat sheet (compress or the basis of a material to form an article such as a pillow, tube, quilt or the like: see col. 1, lines 5-55, col. 2, lines 12-14, col. 3, lines 8-55, col. 4, lines 3-18 and col. 5, lines 19-48).

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As to claim 37, Zafiroglu discloses that the hydrophilic polymeric fibers are blended with the fiberfill in a range of 5-30%, which overlaps the range of 15-75% (col. 3, lines 8-12).

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zafiroglu in view of Silvas (5,755,110). Zafiroglu discloses that the sheet material can be made into a quilt, pillow, etc. as recited above, but lacks the specific disclosure that the article or garment formed is a shirt, vest, pant or jacket. But, Silvas discloses a cooling vest with elongated strips containing a polymer absorbing material which form an integral part of the vest (col. 4, lines 20-64).

Therefore, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the article of Zafiroglu, as taught by Silvas, to include a vest to provide cooling of the upper torso of a person.

Claims 33 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zafiroglu.

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As to claim 33, Zafiroglu discloses that a small sample of the compress material is soaked for one minute, but the Examiner maintains that larger articles or sheets of material would require soaking for a longer time, for example, for 2-5 minutes (an obvious non-critical time period) depending upon the size of the article.

As to claim 38, Zafiroglu further discloses the compress can be hot or cold for medical use (col. 1, lines 5-31), therefore, the examiner maintains that it would have been obvious to modify the method of Zafiroglu above to warm a person also, and that the article would be soaked in warm water until it reached the desired temperature before being deployed in sheet form as a compress.

Claims 34-36 and 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zafiroglu in view of Sawanishi et al. (4,562,114). Zafiroglu discloses hydrophilic polymeric fibers or particles but lack the specific disclosure that they are composed of not less than 90 weight % of acrylonitrile and not less than 10 weight % of a water absorbing resin containing carboxyl groups and having a degree of swellabilty of 10-300 cc/g. But, Sawanishi et al. disclose water-absorbing acrylic fibers of precisely this composition also including having a resin with a particle diameter not larger than 0.5 microns and a carboxyl group represented by COOX, wherein X is NH_4 (col. 1, lines 8-21, col. 2, lines 9-52 and col. 6, lines 27-68). Therefore, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the article of Zafiroglu,

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as taught by Sawanishi et al., as an alternative equivalent composition for forming a layer of the compress for cooling or warming a person.

Allowable Subject Matter

Claims 47-65 are allowed.

Claims 42 and 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Aldridge (5,933,865) discloses a multi-use garment having a woven aramid fiber material used for batting; Wanek et al. (5,466,513) disclose a multi-layer absorbent composite comprising hydrophilic polymeric fibers; Kim (5,087,513) discloses a composite containing superabsorbent polymer; Tanaka (4,873,143) discloses a water-swellaable fiber and Japanese Patent Pub. No. 10508/1983 which is composed of an acrylonitrile polymer and carboxyl groups represented by COOX, wherein X is NH₄; and Coates (4,252,119) discloses a pack for moist patent therapy.

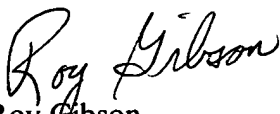
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Gibson whose telephone number is (703) 308-3520. The examiner can normally be reached on Monday-Friday from 9 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Linda Dvorak, can be reached on (703) 308-0994. The fax phone number for this Group is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

September 12, 2001


Roy Gibson
Patent Examiner
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